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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/824,122
Inventor(s) : Gregory Ashton, et al.
Filed : April 14, 2004
Art Unit : 3761
Examiner : Laura C. Hill
Docket No. : 9523
Confirmation No. : 6454
Customer No. : 27752
Title : Dual Cuff for a Unitary Disposable Absorbent Article Made of a Continuous Cuff Material

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APPEAL BRIEF

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P. O. Box 1450
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Final Office Action mailed on October 16, 2006. A timely Notice of Appeal was filed on January 12, 2007. This Brief is filed with a one-month extension, per the attached petition and the required fee.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-13 and 15-17 are pending. Claims 1-13 and 15-17 stand rejected. Claims 1-13 and 15-17 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

STATUS OF AMENDMENTS

The Applicant has not filed an amendment subsequent to the Final Office Action.

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Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claims 1 and 15 each claim a number of common elements, which are described together below. The differing elements are pointed out at the end of this Summary.

Independent claims 1 and 15 each claim a unitary disposable absorbent article (#20 in Fig. 1, and page 4, lines 20-22, 9-12, and 1-3) comprising: an absorbent core (#28 in Figs. 1, 2, 5, 10A, 10B, and page 6, line 26 – page 7, line 2) having a garment surface (page 7, lines 24-25) and a body surface (page 2, lines 1-2); a liquid permeable topsheet (#28 in Figs. 1, 2, 5, 10A, 10B, and page 5, lines 33-34) positioned adjacent said body surface of said absorbent core; and a liquid impermeable backsheet (#26 in Figs. 2, 5, 10A, 10B, and page 7, line 24 – page 7, line 22) positioned adjacent said garment surface of said absorbent core.

The unitary disposable absorbent article also comprises an elastically contractible dual cuff (#30 in Figs. 2, 4B, and 5, #130 in Figs. 6-9, and page 10, line 18 – page 11, line 11, page 15, line 33 – page 16, line 3) having a proximate end (#35 in Figs. 2, 4B and 5, and page 10, lines 18-19) and a distal end (#39 in Figs. 2, 4B and 5, and page 10, line 19), said dual cuff being joined to said article by a cuff bond (#70 in Figs. 2, 4B, 5, 10A, and 10B, and page 10, lines 25-28, page 11, lines 12-22), said dual cuff having a first cuff (#40 in Figs. 2, 4B, and 5, and #140 in Figs. 6-9, and page 10, lines 19-23, page 15, lines 19-24 and 33, page 16, line 17) and a second cuff (#50 in Figs. 2, 4B, and 5, and #140 in Figs. 6-9, and page 10, lines 19-23, page 15, line 33 – page 16, line 1), said first cuff being disposed between said proximate end and said cuff bond, said second cuff being disposed between said cuff bond and said distal end, said dual cuff being constructed of a continuous cuff material (#33 in Figs. 2, 4B, and 5, page 10, lines 20-21, page 10, line 23 – page 11, line 9) and enclosed by said cuff bond (Figs. 2 and 4B).

In the unitary disposable absorbent article, said distal end is formed by said cuff material being folded and said proximate end is formed by said cuff material being folded. (Fig. 4A.) Said first cuff envelopes at least one first elastic (#42, #44 in Figs. 1-2, 4B, 5, and 7-9, and page 5, lines 11-12, page 10, lines 21-22, 25-28, page 11, line 23 – page 12, line 15, page 16, lines 4-13), wherein said first elastic has a first and second end

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

(Fig. 1), wherein said first elastic is secured to said first cuff near said first and second ends. Said second cuff envelopes at least one second elastic (#52, #54 in Figs. 1-2, 4B, 5, and 7-9, and page 5, lines 11-12, page 10, lines 22-23, 25-28, page 11, line 23 – page 12, line 15, page 16, lines 4-13), wherein said second elastic has a first and second end (Fig. 1), wherein said second elastic is secured to said second cuff near said first and second ends.

In addition to the above-described common elements, independent claim 1 also claims that said first and second cuffs are barrier cuffs (page 5, lines 9-12, page 11, lines 21-22).

In addition to the above-described common elements, independent claim 15 also claims that said dual cuff is bonded to said article by a single bond. (Page 10, lines 25-28, and page 11, lines 9-11.)

The Applicant argues independent claim 1, with its dependent claims 2-13, and independent claim 15, with its dependent claims 16-17, all together.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-13 and 15-17 are unpatentable under 35 U.S.C. § 102(b) over St. Louis, et al. (US Patnt No. 5,993,433).

ARGUMENTS

Rejection of Claims 1-13 and 15-17 under 35 U.S.C. § 102(b) over St. Louis

The rejections of claims 1-13 and 15-17 under 35 U.S.C. § 102(b) over St. Louis are improper because the St. Louis reference does not describe each and every claim limitation recited in each of the Applicant's independent claims 1 and 15.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

The Applicant's independent claims 1 and 15 each recite in part a "unitary disposable absorbent article" including a "dual cuff" that is "enclosed by said cuff bond."

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

Figure 2 of the application illustrates a dual cuff 30 with a cuff bond 70. The Applicant's specification states:

FIG. 2 is a fragmentary sectional view taken along section line 2-2 of FIG. 1 and depicts the diaper construction in the crotch region 37 of the diaper 20 as it is shaped before being applied to the wearer (i.e., the diaper is subjected to elastic contraction). Dual cuff 30 has a proximate end 35, distal end 39 and regions therebetween identified as first cuff 40 and second cuff 50. Dual cuff 30 may be constructed from a continuous cuff material 33 that substantially envelopes the elastics of first cuff 40 and second cuff 50. More specifically, first cuff 40 has at least one elastic (although two elastics 42, 44 are shown) and second cuff 50 also has at least one elastic (although two elastics 52, 54 are shown) that are enveloped within cuff material 33. In this way, only a continuous cuff material 33 is used and manipulated during the construction of dual cuff 30, thus making easier the manufacturing of said dual cuff. Moreover, cuff material 33 need only be enclosed/bonded at a single location, as exemplified by cuff bond 70, in order to substantially envelope elastics 42, 44, 52, 54, thus providing improved barrier properties by minimizing the number of potential leakable locations (e.g., bonding locations).

(Page 10, lines 16-28, underlining added.)

The Final Office Action cited a gusset-flap member 19 and a gusset attachment 172 of the St. Louis reference against the dual cuff and the cuff bond of the Applicant's independent claims 1 and 15. Specifically, the Final Office Action referred to "said dual cuff 19 being constructed of a continuous cuff material 174 and enclosed by the cuff bond 172 (column 4, lines 60-63 and figure 6)." (Page 4, lines 4-6.) The Final Office Action further stated:

In response to Applicant's arguments that the St. Louis reference does not appear to disclose that the gusset attachment 172 *encloses* the gusset-flap member and thus there is no recitation that the dual cuff is enclosed by the cuff bond as recited in claim 1 (see Remarks page 8), Examiner maintains that the gusset attachment 172 encloses gusset-flap member 19 since each containment flap section 144 is integrally formed with a corresponding one of the leg gusset sections 142 and is positioned relatively inboard therefrom to provide gusset-flap member 19 (column 4, lines 53-56, figure 6). Moreover it is noted that Examiner has correctly interpreted the term "enclosed" consistent with what is defined in the Specification (see page 10, lines 25-28) to be interchangeable and equivalent to the term "bonded." Thus since the gusset attachment/cuff bond 172 is bonded and

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

attached by leg gusset sections 142 that comprise the gusset-flap member 19, the "enclosed" recitation of claim 1 has been met.

(Page 2, lines 4-16, italics original, underlining added.) From the Applicant's review, the Final Office Action appears to take the position that the phrase "cuff material 33 need only be enclosed/bonded at a single location" from the Applicant's specification (page 10, lines 25-26) defines enclosed as equivalent to bonded.

The words of a claim must be given their plain meaning unless the applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). The Applicant asserts that the use of "enclosed/bonded" in the specification does not clearly define the term "enclosed" as equivalent with the term "bonded."

The symbol / is called a diagonal. The dictionary defines a diagonal as "the symbol / used especially to denote 'or' (as in *and/or*), 'and or' (as in *straggler/deserter form*), 'per' (as in *feet/second*), 'in' or 'of' (as in *U.S. Embassy/Paris*), 'shilling' (as in *6/8d*), or 'for' (as in *2/39*) to indicate division (as in *birth/death ratio*) or the end of a line of verse or of a display line when quoted in running text, to separate terms of quantity (as in *5 tons/7 cwts/57 lbs*) or the figures of a date (as in *1/9/56*), or to enclose phonemic rather than phonetic symbols – called also *oblique, slash, comma, separatrix, slant, slash, slash mark, solidus, virgule*." (WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged), page 622 (2002). The dictionary definition of the symbol / does not include a use denoting equivalence, as suggested by the Final Office Action. Thus, the dictionary indicates that the use of the / symbol in "enclosed/bonded" does not clearly define the term "enclosed" to be equivalent with the term "bonded."

Instead, the Applicant submits that the use of the / symbol in "enclosed/bonded" is intended to denote "and or" as in "enclosed and or bonded." The Applicant's specification supports this meaning as it describes bonding functions. The specification describes a first bonding function: connecting a dual cuff. "In yet another example, it may be desirable that dual cuff 30 be connected to diaper 20 by way of a single bond (e.g., adhesive, ultrasonic; e.g., cuff bond 70 to topsheet 24)." (Page 11, lines 9-11.) "Cuff bond 70 may also join dual cuff 30 to topsheet 24." (Page 11, line 15.) The

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

specification also describes a second bonding function: enclosing a dual cuff. "Dual cuff 30 is constructed from a continuous cuff material 33 which is enclosed by cuff bond 70." (Page 14, lines 5-6.) Since only one of these two bonding functions involves enclosing a dual cuff, the term "bonded" cannot be equivalent to "enclosed." Thus, the specification indicates that the use of the / symbol in "enclosed/bonded" does not clearly define the term "enclosed" to be equivalent with the term "bonded."

Further, the Applicant asserts that the remainder of the specification also does not clearly define the term "enclosed." Since the specification does not clearly define "enclosed," the term must be given its plain meaning consistent with the specification. As described above, the Applicant's Figure 2 illustrates an embodiment wherein cuff material 33 is enclosed by a cuff bond 70. In the Applicant's Figure 2, the cuff bond 70 completely closes off the cuff material 33. With respect to Figure 4B, the Applicant's specification states that "Dual cuff 30 is constructed from a continuous cuff material 33 which is enclosed by cuff bond 70." (Page 14, lines 5-6.) In the Applicant's Figure 4B, the cuff bond 70 also completely closes off the cuff material 33. Thus, based on the Applicant's specification, the Applicant submits that the plain meaning of the term "enclosed" is completely closed off.

The Applicant's independent claim 1 recites in part a "dual cuff" that is "enclosed by said cuff bond." Since the claim term "enclosed" means completely closed off, the Applicant's independent claim 1 describes an embodiment wherein a dual cuff is completely closed off by a cuff bond. The Applicant submits that the St. Louis reference does not describe an embodiment wherein a dual cuff is completely closed off by a cuff bond, as described in the Applicant's independent claim 1. The St. Louis reference states that the "gusset-flap 19 can be connected to at least one of the topsheet and backsheets layers with a gusset attachment 172." (Col. 6, lines 8-10.) However, from the Applicant's review, the specification of the St. Louis reference does not appear to describe a gusset attachment completely closed off by a gusset-flap, as described in each of the Applicant's independent claims 1 and 15.

"The identical invention must be shown in as complete detail as is contained in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

(Fed. Cir. 1989). Figures 4, 5, and 6 of the St. Louis reference illustrate various embodiments of gusset attachments 172 for connecting gusset flaps 19. However, from the Applicant's review, none of these figures appear to definitively illustrate a gusset attachment 172 completely closed off by a gusset-flap member 19. Instead, in the cross-sectional views of these figures, the gusset attachments 172 are set off from the gusset-flap members 19 and their connected configuration is unclear. Thus, the Applicant submits that the St. Louis reference does not describe an embodiment wherein a dual cuff is completely closed off by a cuff bond, in as complete detail as described in each of the Applicant's independent claims 1 and 15.

Therefore, the St. Louis reference, does not describe each and every element as set forth in each of the Applicant's independent claims 1 and 15. For this reason, the Applicant respectfully submits that the Final Office Action has not established anticipation of the invention of the Applicant's claim 1 or 15. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claims 1 and 15 as well as for dependent claims 2-13 and 16-17, which depend therefrom. The Applicant respectfully requests allowance of claims 1-13 and 15-17.

The Applicant's independent claims 1 and 15 also each recite in part a "unitary disposable absorbent article" including a "first elastic, wherein said first elastic has a first and second end, wherein said first elastic is secured to said first cuff near said first and second ends" and a "second elastic, wherein said second elastic has a first and second end, wherein said second elastic is secured to said first cuff near said first and second ends."

Figure 1 of the application illustrates a disposable diaper 20 with elastics 42, 44, 52, and 54. In Figure 1, each of these elastics is illustrated as an elongated structure of a definite length with a first end and a second end. Figure 2 of the application illustrates a cross-sectional view of a portion of the disposable diaper 20, including the elastics 42, 44, 52, and 54. In Figure 2, the cross-section of each of these elastics is illustrated as having an overall circular shape. Thus, each of the elastics 42, 44, 52, and 54, is illustrated in the Applicant's figures as having an overall cylindrical shape.

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

The Applicant's specification states that "Elastics 42, 44, 52, 54, having a first and second end, may be secured to their respective cuff only near their ends or along their entire length." (Page 11, lines 26-27.) The Applicant's specification also states that "Typically, said barrier cuff envelopes/contains at least one elastic that is connected primarily at its opposing ends to the diaper (e.g., drawstring technique for better fit)." (Page 5, lines 11-12.) Similar descriptions can also be found in the Application's specification on page 2, at lines 8-9 and 11-12, and on page 16 at lines 11-12.

The Final Office Action cited elastomeric members 68a and 138 of the St. Louis reference against the secured elastics of the Applicant's independent claim 1. Specifically, the Final Office Action stated that "at least one first elastic 68, 68a is secured to the first cuff near the first and second ends (figure 6)" (page 4, lines 8-9) and that "the second elastics 138 are secured to the second cuff near the first and second ends (figure 6)" (page 4, lines 10-12). The Final Office Action further stated:

In response to Applicant's arguments that the St. Louis reference does not appear to disclose that the elastomeric members 68a or 138 are secured *near their first and second ends* as recited in claims 1 and 15 (see Remarks page 9), Examiner notes that the "first and second ends" have not been defined anywhere by Applicant to be limited to the distal and proximal ends or proximal and distal ends, respectively. Thus Examiner maintains that the first elastic 68, 68a is secured to the first cuff at its first and second distal and proximal ends and the second elastic 138 is also secured to first cuff at its first and second distal and proximal ends (see page 4 of the Office action dated 15 May 2006 and also St. Louis figure 6) [Also please note that the "first cuff" has been interpreted to be the upstanding portion between elements 141 and 172 and the "second cuff" has been interpreted to be the parallel portion lying between elements 172 and 140.]

(Page 2, line 17 – page 3, line 6, italics original, underlining added.) Figure 6 of the St. Louis reference illustrates circular cross-sections of elastomeric members 68, 68a, and 138, which contact cuffs at various points. From the Applicant's review, the Final Office Action appears to take the positions that: 1) the points at which the circular cross-sections contact the cuffs are "ends" and 2) the elastomeric members are "secured" at those "ends."

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

During patent examination, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). The Applicant asserts that the Final Office Action gave an unreasonably broad interpretation when it cited two points of contact of circular cross-sections of elastomeric members of the St. Louis reference against the "first and second ends" of elastics of the Applicant's independent claim 1. By definition, a circular shape does not have an "end." Accordingly, a circular cross-section of an elastomeric member also does not have an "end." Further, the interpretation offered by the Final Office Action does not allow an elastomeric member to be used as a "drawstring" in a cuff, as described for the elastics in the Applicant's specification. Thus, the Applicant submits that citing two points of contact of the circular cross-sections of the elastomeric members of the St. Louis reference against the "first and second ends" of elastics of the Applicant's independent claim 1 requires an unreasonably broad interpretation.

Therefore, the St. Louis reference, does not describe each and every element as set forth in each of the Applicant's independent claims 1 and 15. For this reason, the Applicant respectfully submits that the Final Office Action has not established anticipation of the invention of the Applicant's claim 1 or 15. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claims 1 and 15 as well as for dependent claims 2-13 and 16-17, which depend therefrom. The Applicant respectfully requests allowance of claims 1-13 and 15-17.

Even if the points of contact of the circular cross-section of the elastomeric members of the St. Louis reference could be characterized as "ends," the Applicant submits that the St. Louis reference does not describe an embodiment wherein the elastomeric members would be "secured" near those ends as recited in part in each of the Applicant's independent claims 1 and 15. The St. Louis reference states that "The elastic members may be affixed to the appointed diaper components in any of several ways which are known in the art." (Col. 10, lines 43-45.) However, from the Applicant's review, neither the specification nor the figures of the St. Louis reference appear to describe any particular location for affixing the elastomeric members 68, 68a, and 138.

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

Thus, the St. Louis reference does not describe an embodiment wherein an elastic member is secured near its "first and second ends," as recited in part in each of the Applicant's independent claims 1 and 15.

Therefore, the St. Louis reference, does not describe each and every element as set forth in each of the Applicant's independent claims 1 and 15. For this reason, the Applicant respectfully submits that the Final Office Action has not established anticipation of the invention of the Applicant's claim 1 or 15. As a result, the Applicant respectfully requests that the Board reverse the 102(b) rejections for independent claims 1 and 15 as well as for dependent claims 2-13 and 16-17, which depend therefrom. The Applicant respectfully requests allowance of claims 1-13 and 15-17.

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

SUMMARY

In view of all of the above, it is respectfully submitted that claims 1-13 and 15-17 have been improperly rejected under 35 U.S.C. § 102(b) in light of the reasoning and analysis given in the Final Office Action. In light of all of the analysis and discussion provided above, Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of claims 1-13 and 15-17 and remand the application to the Examiner with instructions that these claims be allowed over the cited art.

Respectfully submitted,



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Customer No. 27752

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

CLAIMS APPENDIX

1. (Original) A unitary disposable absorbent article comprising:
an absorbent core having a garment surface and a body surface;
a liquid permeable topsheet positioned adjacent said body surface of said absorbent core;
a liquid impermeable backsheet positioned adjacent said garment surface of said absorbent core; and
an elastically contractible dual cuff having a proximate end and a distal end, said dual cuff being joined to said article by a cuff bond, said dual cuff having a first cuff and a second cuff, said first cuff being disposed between said proximate end and said cuff bond, said second cuff being disposed between said cuff bond and said distal end, said dual cuff being constructed of a continuous cuff material and enclosed by said cuff bond,
wherein said distal end is formed by said cuff material being folded, wherein said proximate end is formed by said cuff material being folded;
wherein said first cuff envelopes at least one first elastic, wherein said first elastic has a first and second end, wherein said first elastic is secured to said first cuff near said first and second ends;
wherein said second cuff envelopes at least one second elastic, wherein said second elastic has a first and second end, wherein said second elastic is secured to said second cuff near said first and second ends;
wherein said first and second cuffs are barrier cuffs.
2. (Original) The absorbent article of claim 1 wherein said first cuff envelopes at least one elastic.
3. (Original) The absorbent article of claim 2 wherein said elastic is operatively associated with said first cuff by securing it with an elastic attachment element.
4. (Original) The absorbent article of claim 1 wherein said second cuff envelopes at least one elastic.

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

5. (Original) The absorbent article of claim 4 wherein said elastic is operatively associated with said second cuff by securing it with an elastic attachment element.
6. (Original) The absorbent article of claim 1 wherein said article is a disposable diaper.
7. (Original) The absorbent article of claim 6 wherein said disposable diaper is a prefastened diaper.
8. (Original) The absorbent article of claim 1 wherein said continuous cuff material is constructed of a lesser-water-permeable material with a more-water-permeable material placed inside said lesser-water-permeable material.
9. (Original) The absorbent article of claim 8 wherein said lesser-water-permeable material is a spunbound material.
10. (Original) The absorbent article of claim 8 wherein said more-water-permeable material is a meltblown material.
11. (Original) The absorbent article of claim 1 wherein said continuous cuff material is constructed of a spunbound-meltblown laminate.
12. (Original) The absorbent article of claim 1 wherein said continuous cuff material is constructed of a series of various materials.
13. (Previously Presented) The absorbent article of claim 17 wherein said first cuff stands taller than said second cuff.
14. (Canceled)

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

15. (Original) A unitary disposable absorbent article comprising:
an absorbent core having a garment surface and a body surface;
a liquid permeable topsheet positioned adjacent said body surface of said absorbent core;
a liquid impermeable backsheet positioned adjacent said garment surface of said
absorbent core; and
an elastically contractible dual cuff having a proximate end and a distal end, said dual
cuff being joined to said article by a cuff bond, said dual cuff having a first cuff and a
second cuff, said first cuff being disposed between said proximate end and said cuff
bond, said second cuff being disposed between said cuff bond and said distal end, said
dual cuff being constructed of a continuous cuff material and enclosed by said cuff
bond,
wherein said distal end is formed by said cuff material being folded, wherein said
proximate end is formed by said cuff material being folded;
wherein said first cuff envelopes at least one first elastic, wherein said first elastic has a
first and second end, wherein said first elastic is secured to said first cuff near said first
and second ends;
wherein said second cuff envelopes at least one second elastic, wherein said second
elastic has a first and second end, wherein said second elastic is secured to said second
cuff near said first and second ends;
wherein said dual cuff is bonded to said article by a single bond.

16. (Original) The absorbent article of claim 15 wherein said single bond is said cuff
bond.

17. (Previously Presented) The absorbent article of claim 1 wherein one of said first
and second cuffs stands taller than the other cuff.

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

EVIDENCE APPENDIX

(none)

Appl. No. 10/824,122
Docket No. 9523
Appeal Brief dated March 21, 2007
In response to Office Action mailed on October 16, 2006
Customer No. 27752

RELATED PROCEEDINGS APPENDIX

(none)

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